

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.

FILED BY CLERK
DEC -2 2009
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

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| THE STATE OF ARIZONA, |) | |
| |) | |
| Respondent, |) | 2 CA-CR 2009-0184-PR |
| |) | DEPARTMENT A |
| v. |) | <u>MEMORANDUM DECISION</u> |
| |) | Not for Publication |
| JAY DAVID RAMSEY, SR., |) | Rule 111, Rules of |
| |) | the Supreme Court |
| Petitioner. |) | |
| _____ |) | |

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20030703

Honorable Virginia C. Kelly, Judge

REVIEW GRANTED; RELIEF DENIED

Jay David Ramsey

Florence
In Propria Persona

E S P I N O S A, Presiding Judge.

¶1 Following a jury trial, Jay David Ramsey was convicted of continuous sexual abuse of a minor. The trial court sentenced him to a presumptive, twenty-year prison term, and this court affirmed his conviction and sentence on appeal. *State v. Ramsey*, 211 Ariz. 529, 124 P.3d 756 (App. 2005). Ramsey filed a petition for post-conviction relief, pursuant to Rule 32, Ariz. R. Crim. P., alleging, among other things, that his trial counsel had been ineffective. The trial court summarily dismissed the petition, and this petition for review

followed. We review the trial court's order for an abuse of discretion. *See State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990). Finding none, we deny relief.

¶2 Ramsey contends his trial counsel was ineffective because she “(1) failed to object to the court’s preclusion of acquittal and dismissal evidence; and (2) failed to introduce relevant rebuttal evidence at trial against the state’s ‘other bad acts’ as to sexual conduct with a minor and sexual abuse allegations.” His contentions can only be understood in light of prior proceedings involving cause number CR-20013448.

¶3 In that case, Ramsey had been indicted on multiple counts of sexual abuse against the same victim; the majority of those charges had been dismissed with prejudice, another had resulted in Ramsey’s acquittal, but he was convicted of two counts of furnishing obscene or harmful items to a minor, convictions we affirmed on appeal. *See State v. Ramsey*, No. 2 CA-CR 2003-0367 (memorandum decision filed Aug. 31, 2005).

¶4 The trial court explained in its minute entry ruling denying post-conviction relief in this case that the charged conduct had been a “key difference between this trial and the others” that had been based on the previous indictment. The court stated: “In the other trials, the counts subject to dismissal or acquittal [had] alleged that individual acts of abuse [had] occurred in a specific week, month, or year; in this trial, the sole count was continuous sexual abuse of a minor.” Addressing counts five through sixty-four of the previous indictment, the court further explained:

The victim [had] told police that she [had been] molested every week. During cross-examination in the first trial, [however,] she [had] said it was “possible” that [the abuse] did not occur every week. The prosecutor stated that he realized the jury could not determine in which week an act of abuse “possibly” did not occur, and dismissed all of those counts.

And, the court noted that “the dates of these counts all were outside the time period for which continuous sexual abuse was alleged in this trial.”

¶5 The “acquittal and dismissal evidence” and “relevant rebuttal evidence” to which Ramsey refers in his petition for review are the dismissals and judgments of acquittal in the previous case. The “other bad acts” evidence to which he refers appears to be the victim’s testimony that Ramsey had committed additional acts against her outside of the time frame alleged for the continuous sexual abuse. Ramsey concedes his trial counsel had not objected to such evidence as a matter of trial strategy.

¶6 The trial court denied post-conviction relief in this case in a comprehensive minute entry order, in which, despite Ramsey’s contention otherwise on review, it correctly identified the relevant legal issues. The court ruled correctly on Ramsey’s claims, and we see no purpose in rehashing the court’s order denying relief. Therefore, we adopt the trial court’s ruling. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Although we grant review of Ramsey’s petition for review, we deny relief.

PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

JOSEPH W. HOWARD, Chief Judge

GARYE A. VÁSQUEZ, Judge